THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

W.P. NO : 7191 of 2004 & W.P.No:14210 of 2004

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26th September, 2005.

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(W.P.No:7191 of 2004)

Between:

1. S.Samuel Paul s/o lt. Deva Raju, aged 32 years, working as Senior Assistant (Mandal resource person), Office of the District Educational Officer, Kurnool. & others.

..... PETITIONERS

AND

1. The Secretary to Government, School Education Department, A.P. Hyderabad & others.

.....RESPONDENTS

(W.P.No:14210 of 2004)

Between:

1. The Government of A.P. rep. By its Principal Secretary to School Education Department, Secretariate, A.P. Hyderabad. & others.

..... PETITIONERS

AND

1. V.Srinivasulu, Typist, o/o the District Educational Officer, Kurnool.

.....RESPONDENTS

This Court made the following:

COMMON ORDER (Per the Honourable Smt.Justice T.Meenakumari)

The above writ petitions are filed by the petitioners against the order passed in O.A.No:7398 of 1998 on 7.1.2004 by the Tribunal, under which the O.A. was disposed of with the observations as mentioned therein.

The petitioners in W.P.No:7191 are un-official respondents-8, 5, 4 and 7 respectively and respondents-1 to 3 are official respondents and 5th respondent is the applicant before the tribunal whereas the petitioners in W.P.No:14210 of 2004 are official respondents and the 1st respondent. Since both the writ petitions filed by the official respondents on one hand and the unofficial respondents on the other, arose out of the same order of the tribunal, they are being disposed of by a common order.

The status of the parties will be referred to as arrayed before the tribunal.

Originally, the applicant has filed the O.A. seeking to set aside the proceedings of the 3rd respondent in R.C.No:14838/B1/97, dated 5.10.1998 and the proceedings in R.C.No:7802/B1/92, dated 5.12.1998 and consequently, to direct the respondents-1 to 3 to promote him as Senior Assistant with all consequential benefits by restoring his seniority w.e.f. 9.12.1987 instead of 1.9.1992. The tribunal having observed that the proceedings in R.C.No:7618/R-Cell/98, dated 1.12.1987

were issued by the Collector and the District Magistrate, Kurnool selecting and allotting the candidates belonging to Physically handicapped category to the unit officers mentioned therein and in the said proceedings, the applicant who stood at S.No:3, was allotted to the Adult Education Department as Typist and therefore, the selection and allotment of the applicant is made after being sponsored by the District Employment Exchange, Kurnool and that subsequently, the applicant was transferred to the unit of D.E.O. Kurnool along with the post and that when the consent of the applicant was not obtained at the time of his transfer to the unit of D.E.O. Kurnool, it cannot be said that the transfer was at his own request and therefore, the applicant is entitled to the seniority right from the date of his initial appointment in the Adult Education Department viz., 9.12.1987 as per Rule 27 (ii) of the A.P. Ministerial Service Rules, 1966, disposed of the O.A. Having aggrieved by the same, the present writ petitions are preferred separately by the official respondents on one hand and the unofficial respondents on the other.

Heard the learned counsel for the applicant, the learned counsel for unofficial respondents and the learned G.P. for Education for official respondents.

It is contended by the learned G.P. for Education that as per G.O.Ms.No:36, dated 25.1.1990, the staff rendered surplus shall be treated as retirement employee for want of vacancies in reverse order, but the Government on humanitarian grounds have decided as a special case to re absorb the surplus staff in other departments where vacancies exist in the same or similar posts as per rule 6 (i) of the said G.O. The G.O. further stipulates that they will be deemed to have been directly appointed/transferred to later department at their request and take rank below the last regular candidate in the category in which he is absorbed in the latter department. It is further contended that accordingly, the seniority of the applicant was fixed w.e.f. 1.9.1992 i.e., the date of absorption to the D.E.O. Unit, Kurnool and his pay and leave were protected. It is further contended that the unofficial respondents are seniors in D.E.O.'s unit of Kurnool District and as per the seniority list, they were promoted and the applicant is entitled to the seniority as per G.O.Ms.No:36 and therefore, the order of the tribunal is not justified in directing the official respondents to reckon the seniority of the applicant w.e.f. 9.12.1987, the date of his initial appointment.

On the other hand, the learned counsel for the applicant submits that as per

Rule 27 (ii) of the A.P.Ministerial Service Rules, the applicant is entitled to his seniority right from the date of his initial appointment in the Adult Education Department viz., 9.12.1987 and therefore, the order of the tribunal, does not warrant any interference by this Court.

We have perused the material available on record and the order impugned. The undisputed facts, are that the unofficial respondents have been appointed initially as Junior Assistants by direct recruitment in the unit of the District Educational Officer, Kurnool. After the closure of the Adult Education Scheme, the Government has issued G.O.Ms.No:36, GAD (Services-A) Department, dated 25.1.1990. The objects and reasons of the G.O. are to reabsorb the surplus staff in other Department where vacancies exist in the same or similar posts i.e., initial posts to which the staff rendered surplus were appointed by direct recruitment. It has further made it clear that surplus personnel shall be deemed to be retrenched employees while stipulating the following guidelines:

1.Departments would examine the possibility of absorbing surplus personnel first before direct recruitment is resorted to,

2.Surplus staff in one Department should first be absorbed in the same department to the extent possible without affecting the provisions of A.P. Public Employment order, 1975 and subject to para 5 (2) of the order in vacancies in other units.

3.Those surplus persons who cannot be absorbed in the same category of post in the Department should be reverted in reverse order of seniority subject to the provisions of the rule of special representation in favour of scheduled castes and scheduled tribes to the lower category.

4.Such of those junior surplus persons in the initial direct recruitment categories who cannot be absorbed in existing vacancies in the same Department will be treated as if they were retrenched employees and considered for direct recruitment to existing vacancies in other Departments.

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6.In the event the staff rendered surplus desire to or are proposed to be absorbed on a permanent basis in the Department to which they are re allotted, such permanent absorption shall be on the basis of the following terms and conditions:

(i)As the surplus staff is being accommodated by re allotment on hjumanitarian grounds, they will be deemed to have been directly appointed/transferred to the later department, at their request and they will take their rank below the last regular candidate in the category in which they are absorbed in the later Department. The consent of the staff to be so directed appointed/transmitted on the above condition will have to be obtained before such transfer is effected/appointed is made.

(ii)where more than one person from the same department, rendered surplus, is absorbed in another department, the seniority inter se amongst them in the absorbed department, will be as that obtained in their parent department. Xxxxxxxx

A perusal of the material available on record goes to show that the transfer of the applicants in question is a consequence of closure of the scheme under Adult Education. Therefore, it cannot be interpreted that as if it is a transfer on administrative grounds and apart from that, the arrangement made by the Government by way of issuing the G.O. in question, is nothing but accommodating them instead of terminating their cases. In this background of the matter, We feel that the transfers in question have been effected within the objects and reasons as contemplated under the G.O. in question in order to accommodate the employees instead of terminating them on the closure of the scheme for adult education and the said transfers cannot be interpreted as if they are on administrative grounds so as to take the shelter under rule 27 (ii) of the A.P. Ministerial Service Rules. Hence, we have no hesitation to hold that the order of the tribunal suffers legal infirmity and the same is liable to be set aside.

Accordingly, the above writ petitions are allowed setting aside the order of the tribunal.

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(T.MEENAKUMARI, J)

26th September, 2005

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(P.LAKSHMANA REDDY,J)

gurc/dvs

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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W.P.No:7191 of 2004 & W.P.No:14210 of 2004

(Common Order delivered by the Honourable Smt.Justice T.Meena Kumari)

26th September, 2005.